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No. 75-4

In the

Supreme Court of the United States

OCTOBER TERM, 1975

NORTHERN INDIANA PUBLIC SERVICE COMPANY,
Petitioner,

vs.

PORTER COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA, INC., ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS PORTER COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA, INC., ET AL., IN OPPOSITION

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
QUESTION PRESENTED BY THE PETITION	2
STATEMENT	3
REASONS FOR DENYING THE WRIT	6
I. The Decision of the Court of Appeals Correctly Applied Traditional Standards of Judicial Review	6
II. This Case Presents no Issue of Continuing Major Significance Requiring Review by this Court	13
CONCLUSION	16
APPENDIX	1a

Table Of Citations

Cases:

American Ship Building Co. v. *NLRB*, 380 U.S. 300	6
Calvert Cliffs Coordinating Committee v. *AEC*, 449 F.2d 1109 (D.C. Cir. 1971)	17
Chock Full O'Nuts Corporation v. *United States*, 453 F.2d 300 (2d Cir. 1971)	13
Committee for Nuclear Responsibility Inc. v. *Seaborg*, 463 F.2d 783 (D.C. Cir. 1971)	17
Langnes v. *Green*, 282 U.S. 531	16
Michigan v. *Payne*, 412 U.S. 47	13
Northeast Airlines Inc. v. *Civil Aeronautics Board*, 345 F.2d 484 (1st Cir. 1965), *cert. den.*, 382 U.S. 845	17

PAGE

Pickus v. *United States Board of Parole*, 507 F.2d 1107 (D.C. Cir. 1974) 13

Service v. *Dulles*, 354 U.S. 363 6

Sierra Club v. *Froehlke*, 486 F.2d 946 (7th Cir. 1973) 17

United States v. *Alford*, 274 U.S. 264 17

United States v. *American Ry. Exp. Co.*, 265 U.S. 425 16

United States v. *Leslie Salt Co.*, 350 U.S. 383 13

United States v. *Morton Salt Co.*, 338 U.S. 632 13

Universal Interpretative Shuttle Corp. v. *Washington Metropolitan Area Transit Commission*, 393 U.S. 186 17

Universal Camera Corp. v. *NLRB*, 340 U.S. 474 6

Yellin v. *United States*, 374 U.S. 109 6

STATUTES:

Administrative Procedure Act,

5 U.S.C. §706(2)(E) 6

5 U.S.C. §§551, 553 13

Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2133(d), 2232 12

Energy Reorganization Act of 1974, Pub. L. No. 93-438, 88 Stat. 1223-1254 15

National Environmental Policy Act, 42 U.S.C. §§4321, *et seq.* 17

16 U.S.C. §§460u-460u-9 16

REGULATIONS:

10 CFR Part 100 4

10 CFR §100.3(c) 4, 7, 10, 11

PAGE

10 CFR §100.10(b) 4

10 CFR §100.11(a)(3) 5, 7, 9, 10, 11

AEC/NRC PROCEEDINGS:

Connecticut Light and Power Co., 4 A.E.C. 466 (1970) 9

Consolidated Edison Co., 5 A.E.C. 43 (1972) 9

Consumers Power Co., 5 A.E.C. 214 (1972) 8

Philadelphia Electric Co., RAI-74-6, 1098 (1974) 9

Southern California Edison Co., ALAB-268, NRCI-75/4, 383 (April 25, 1975) 8

Southern California Edison Co., ALAB-248, RAI-74-12, 957 (1974) 4, 8

MISCELLANEOUS:

Supreme Court Rule 19 6

40 Fed. Reg. 26526, June 24, 1975 5

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This brief[1] is in opposition to the petition for a writ of certiorari filed by Northern Indiana Public Service Company ("petitioner"), and in response to the Memorandum

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[1] Filed on behalf of the following respondents: Porter County Chapter of the Izaak Walton League of America, Inc.; Concerned Citizens Against Bailly Nuclear Site; Businessmen for the Public Interest, Inc.; James E. Newman; Mildred Warner and George Hanks.

for the United States and the Nuclear Regulatory Commission (the "Government"), which have not petitioned for certiorari.

OPINIONS BELOW

The opinions in the Court of Appeals, and the orders upon denial of petitions for rehearing and upon denial of suggestions for rehearing *en banc*, are now reported at 515 F.2d 513 (7th Cir. 1975). For consistency with the petition and with the Government memorandum, page references here are to the opinions of the court below, and of the agency, as reproduced in the Appendix to the Petition ("Pet. App. .....").

QUESTION PRESENTED BY THE PETITION

The sole question presented by the petition is whether certiorari should be granted to review the correctness of the decision of the Court of Appeals that the administrative decision of the Atomic Energy Commission, authorizing issuance of a construction permit to petitioner, must be set aside because of non-compliance with the agency's regulations requiring a minimum distance between nuclear power plants and population centers, where the court's decision is based upon a sound construction of the regulations, is fully consistent with the overwhelming number of prior agency actions under the same regulations and with their language and purpose, and where the decision of the court below has no precedential significance by reason of agency action to amend the regulations subsequent to the court's decision.

STATEMENT

Petitioner sought permission to build a nuclear power plant on its Bailly site in Porter County, Indiana on the shore of Lake Michigan. The site is located (1) in one of the most densely populated areas ever considered for a nuclear reactor (Pet. App. 23-24) and (2) in the midst of the Indiana Dunes region, "a natural area difficult to equal anywhere in the Nation", immediately adjacent to the Indiana Dunes National Lakeshore—the nation's first urban national park and "one of the best remaining areas in the Indiana Dunes" (Pet. App. 87). The plant has not been built.[2]

The result of the administrative proceedings was the rejection by the AEC of all objections, including those of the United States Department of the Interior, and the issuance of a construction permit to petitioner. On review in the court below, a number of legal arguments were advanced as bases to set aside the agency decision. The supporting facts showed that, because of the combination of the proximity of heavily populated areas and a unique and specially protected national environmental resource, and because of the availability of a preferable alternative site from both a population and environmental

[2] Following the AEC's issuance of the construction permit, petitioner commenced excavating the site. Because of the imminent and irreparable injury to the National Lakeshore which would have resulted from the next stage of construction activity known as "site dewatering," the court below imposed a stay of that activity on October 16, 1974. As a result of that stay and of the ultimate decision below, there has been no construction in almost a year.

standpoint, the decision of the agency was not legally sustainable.[3]

The Court of Appeals set aside the AEC decision as unlawful on the ground that the decision failed to comply with the agency's regulations in 10 CFR Part 100 regarding the standards for permissible locations for nuclear power plants. The facts essential to the court's decision are not in dispute. The City of Portage, Indiana had a population of 19,127 in 1970. Its projected population is 25,000 between 1976 and 1977, and about 29,000 in 1980 (Pet. App. 13-14).[4] The political, municipal or corporate boundary of Portage is approximately one mile from the proposed reactor location (*id.* at 13). As many as 87,000 persons a day may use the facilities of the National Lakeshore, the boundary of which is adjacent to the plant site, and the adjoining State Park; the boundaries of the communities of Dune Acres, Porter and Burns Harbor, Indiana, are less than two miles from the site of the reactor; and 7,500 employees of Bethlehem Steel Corporation are located about one mile from the site (Pet. App. 16).

It is also undisputed that a proper application of the Commission's regulations (10 CFR §§100.3(c), 100.10(b)

[3] Presumably because the ground of its decision was fully dispositive of the case before it, the Court of Appeals did not reach other issues presented to it. In the event certiorari should be granted, we intend to urge affirmance not only because of the correctness of the decision below on that ground but also on the basis of the alternative grounds. They are discussed briefly at p. 16 n. 20, *infra*.

[4] It is undisputed that anticipated population during the first few years of expected operation of the reactor is the relevant figure. *Southern California Edison Co.*, ALAB-248, RAI-74-12, 957, 960 (1974).

and 100.11(a)(3)) to the facts here required a distance of at least two miles between the proposed reactor and the nearest boundary of a densely populated center containing more than about 25,000 residents. The Court of Appeals held, therefore, that the site did not comply with this requirement, and since an agency must comply with its own regulations, it set aside the AEC decision as unlawful. It rejected, as "ludicrous", the argument that the boundary of Portage should be ignored because the "pink" sections of a map, which itself made no representation or references to population, were asserted to show an otherwise undefined "densely populated area" within Portage to be further away from the reactor site (Pet. App. 15-16).

Following denial of petitions for rehearing and suggestions for rehearing *en banc*,[5] the agency—a party to this litigation—issued what it denominated an "interpretative amendment" to the regulations in issue before the Court of Appeals (40 Fed. Reg. 26526, June 24, 1975; Government Appendix A). As the statement of considerations makes apparent, the agency was seeking by its unilateral pronouncement to overturn a decision of the United States Court of Appeals with which it disagreed.

[5] The Government suggests (p. 5 and n. 8) that there is a conflict among the circuits with respect to the interpretation of the statute authorizing rehearing *en banc*. It has not, however, deemed that, or any other aspect of this case, important enough to seek certiorari.

REASONS FOR DENYING THE WRIT

None of the special and important reasons for review by this Court are present here. Supreme Court Rule 19. The decision below is limited to precluding the construction of one nuclear power plant in a patently inappropriate location. As we demonstrate in Section I, the decision below is correct, in accordance with traditional standards of judicial review, so that the petition's assertion (pp. 2-3, 14) that this Court's review is warranted to prevent a "unique, unwarranted and unnecessary loss" is without merit. And, as we demonstrate in Section II, there is no occasion for review by this Court of a decision below which concededly lacks continuing precedential significance.

I. THE DECISION OF THE COURT OF APPEALS CORRECTLY APPLIED TRADITIONAL STANDARDS OF JUDICIAL REVIEW.

There is no real dispute among the parties as to the applicable legal standards.[6] The issue among

[6] Neither petitioner nor the Government expresses any disagreement with the legal principle, relied upon by the court below (Pet. App. 33), that decisions of the agency must comply with its own regulations. *Yellin* v. *United States*, 374 U.S. 109; *Service* v. *Dulles*, 354 U.S. 363. While we agree that it is for the agency to weigh and appraise the evidence, the findings of the agency must be supported by substantial evidence (5 U.S.C. §706(2)(E)). We do not disagree with the petition (p. 15) and the Government (p. 7) as to the weight to be given to a rational and consistent agency interpretation of its own regulations, but the court should not abdicate its responsibilities of judicial review. *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 490-91; *American*

the parties is only whether the application of the traditional standards of judicial review by the court below was correct. We show below that it was; that its sensible interpretation of the agency's regulations is consistent with the vast number of agency applications of the regulations and with their language and purpose.

The preeminent argument of the petition (p. 15) and of the Government (pp. 6-7) is that the court below erred in failing to give controlling weight to an alleged consistent agency interpretation or application of its regulations to require that the population center distance be determined by population concentrations and not by political boundaries.[7] But the factual premise of the argument is wrong—the agency has not consistently interpreted nor applied the regulations in 10 CFR §§100.3(c) and 100.11(a)(3) to refer to some otherwise undefined area of "population concentration" or "actual location of dense population" rather than to political boundaries. On the contrary, the almost universal application of the regulations has been that the "boundary" referred to in 10 CFR §100.3(c) is that of the nearest city with an actual or expected population of more than about 25,000. We have attached an Appendix listing all published agency decisions, other than those discussed here, in

[6] (Continued)
Ship Building Co. v. *NLRB*, 380 U.S. 300, 335 (concurring opinion). The assertion made by the petition (p. 21-22), but not the Government, as to the breadth of the responsibility reposed by Congress in the particular agency involved here, is inapposite because, as the petition recognizes (p. 10), the application of the population center distance regulations is a mathematical function, not subsumed by the expertise of the agency.

[7] The petition (p. 15) apparently recognizes the ambiguity in the language of the regulations.

which the population center distance measurement was mentioned. It contains 38 decisions which speak of distances to, or to the boundary of, a city or town.

In contrast, and in support of their "consistent interpretation" argument, the petition (p. 17 and n.6) and the Government (p. 6) cite three cases. None of these cases supports the argument. The dicta in *Southern California Edison,* ALAB-248, RAI-74-12, 957, 960-62 (1974), does not indicate that political boundaries are to be ignored. While it mentions consideration of densely populated areas *outside* the city limits, closer to the reactor site, such consideration is consistent with the statutory safety policy of separating reactors from people. As the majority opinion below noted (Pet. App. 14-15), neither reason nor sound safety policy supports reading the regulation as a two-way street in a futile attempt to locate an imaginary boundary *within* the city limits, which would permit locating a reactor closer to people. Moreover, although neither the petition nor the Government mention it, a more recent decision of the NRC in that same proceeding, rendered after the decision of the court below in this case, says that it had "followed a similar course" to that of the court here—measuring the population center distance to the applicable city boundary. *Southern California Edison Co.,* ALAB-268, NRCI-75/4, 383, 403 (April 25, 1975).[8]

[8] The other two cases cited do not support the "consistent interpretation" theory. In *Consumers Power Co.,* 5 A.E.C. 214, 218 (1972), the Licensing Board did not say that the population center distance was to be measured to a boundary other than the City of Midland. Rather, it concurred in the Regulatory Staff's conclusion that the population center distance, required by the plain language of the regulation to be *at least 1⅓ times* the

Anticipating and attempting to avoid the impact of the overwhelming number of decisions contrary to their consistent interpretation theory, the petition (p. 17 n.6) says that the Commission in most cases refers to the distance to the city or town "for purposes of convenience", and the Government (p. 6) says that political boundaries have been used only where "remoteness" of the site "made a more precise determination unnecessary." A review of the agency decisions in the Appendix, however, demonstrates that it simply is not true that political boundaries have been used only where remoteness made a more "precise" determination of actual population unnecessary.[9] Nor is there any mention in those decisions of "convenience."[10]

[8] (Continued)
low population zone radius (10 CFR §100.11(a)(3)), could be reduced so as to equal the radius of the low population zone. *Consolidated Edison Co.,* 5 A.E.C. 43, 45 (1972), involved an operating license, not a construction permit, for a plant already built on a site where another nuclear reactor had been completed and a third reactor was under construction. Although the decision referred to the boundary of an otherwise undefined "more densely populated area", rather than the city boundary, the Board pointed out that there had not been any serious dispute concerning the boundary.

[9] For example, *Philadelphia Electric Co.,* RAI-74-6, 1098, 1101 (1974) (Appendix, p. 5a), says "[t]he distance to Pottstown, the nearest population center, is 1.7 miles", and *Connecticut Light and Power Co.,* 4 A.E.C. 466, 468 (1970) (Appendix, p. 1a), says "the population center distance is 3.2 miles, which is the distance to the nearest boundary of the city of New London."

[10] If by "convenience" the petition means ease and certainty of application, it is clear that the use of existing and clearly defined city boundaries is easier and more certain of application than a boundary created artificially without any articulated basis for defining a "densely populated center."

In sum, the decision of the court below is fully consistent with the overwhelming number of agency applications of the regulations in issue before the court below. Only one agency decision has been cited or found where the boundary of a city was in fact ignored, and there the population center distance was not in issue. On the other hand, 38 agency decisions in fact utilize the distance to, or to the boundary of, a city as the basis to determine compliance with the minimum population distance requirement.

The decision of the court below is also the most consistent with the language and purpose of the regulation. The two specific sections involved are 10 CFR §§100.3(c) and 100.11(a)(3). The former defines the phrase "population center distance" as "the distance from the reactor to the nearest boundary of a densely populated center containing more than about 25,000 residents." The latter, in effect at the time of the Court of Appeals decision, then specifies the minimum length of that distance, in this case two miles. Section 100.11(a)(3) also provided that "due consideration should be given to the population distribution within the population center" and that "where very large cities are involved, a greater distance may be necessary."

Section 100.3(c) does not otherwise define the "densely populated center," the nearest boundary of which is the point of measurement. The court concluded that the "densely populated center" was the City of Portage, and that its nearest boundary was the point of measurement. Section 100.11(a)(3) requires a population center distance of *at least* 1⅓ times the low population zone radius. It must, therefore, contemplate circumstances where a

greater distance may be required. Giving "due consideration" to the distribution of the population within the city, as the next sentence of section 100.11(a)(3) required, may produce a greater population center distance.[11] If, on the other hand, an artificially created boundary other than a city boundary is used to identify the "densely populated center", then by definition the distribution is dense, and the due consideration to distribution requirement would be meaningless.[12]

The petition (p. 16) argues that under the regulations the boundaries of a city of 25,000 persons are irrelevant and that an otherwise undefined "concentration of people" should be the point of measurement. The standard by which the "boundary" of such a densely populated center might be located, however, has never been articulated.[13] Indeed, the decision of the Licensing Board in this case demonstrates the difficulty (Pet. App. 55-56). It appears that the Board found that the City of Portage was the relevant population center, but then, in contravention of section 100.3(c), failed to use the nearest boundary of Portage as the point of measurement. Rather, it concluded that the "due consideration to population distribution within the population center" provision of section 100.11(a)(3) gave it leave to ignore the boundary. As a

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[11] The third sentence describes another situation where a greater distance may be required—"[w]here very large cities are involved, . . ."

[12] There is no language in the regulation to support the theory that there are degrees of density within the "densely populated center" which should be taken into account to give meaning to the sentence.

[13] The Commission's staff witness conceded that there were no specific criteria for population density in terms of number of people per unit area (Tr. 6376-77).

result, the Board ignored the boundary of the population center and thus there is no basis for the Board's conclusion that "the provisions of Part 100 with respect to population center distance are satisfied" (Pet. App. 56). The regulations, if read as urged by petitioner, would be incapable of predictable application, and, therefore, would fail to serve as a standard for the statutory mandate of the Commission to assure adequate protection of the public health and safety. Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2133(d), 2232.

• • •

Since the court below applied traditional concepts of judicial review and construed the agency's regulations consistently with the overwhelming number of agency applications of the regulations, and with their language and statutory purpose, the decision is correct.[14] There is no need for this Court to exercise its power of supervision and certiorari should be denied.

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[14] Both the petition (p. 11 n.7) and the Government (pp. 4, 9) intimate some irregularity about the population center boundary issue, although neither assert it as an error, because it allegedly was not pursued in timely-filed briefs before the AEC Appeal Board. In fact, the issue was raised by these respondents in "Joint-Intervenors' Exceptions to Initial Decision . . .", dated May 6, 1974. It was argued in "Supplemental Brief of Joint-Intervenors in Support of Exceptions. . .", dated June 15, 1974, which the Appeal Board refused to permit to be filed. In affirming the Licensing Board, which had explicitly considered the issue (Pet. App. 55-56), the Appeal Board said that it had conducted an "independent appraisal of the record" (*id.* at 166) and had "examined those portions of the initial decision to which no exceptions were taken or which, though excepted to, were not supported by timely-filed briefs" (*id.* at 197).

II. THIS CASE PRESENTS NO ISSUE OF CONTINUING MAJOR SIGNIFICANCE REQUIRING REVIEW BY THIS COURT.

The Government notes (p. 10) that it has not petitioned for certiorari because the effect of the decision below is "limited by the new regulation to the case at bar." The petition says (p. 3) that what it views as the error of the court below is "unlikely to be repeated" because of the "supervening interpretative amendment." While both presume that the NRC action of June 20, 1975, purporting to amend the regulation, was valid and effective, even without that presumption[15] the action of the agency demonstrates the lack of significant prece-

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[15] There appear to be serious doubts as to the validity of the presumption. The agency's action raises questions as to the efficacy of judicial review of administrative decisions; as to whether the amended regulation was validly promulgated under the rule-making procedures required by the Administrative Procedure Act (5 U.S.C. §§551, 553); whether it properly comes within the exemptions for "interpretative" regulations, and, whether it is an ad hoc amendment entitled to no weight in pending litigation to which it is directed. Even assuming that the new regulation was validly promulgated, there is a question as to whether it applies retroactively to petitioner's application. See generally *United States* v. *Leslie Salt Co.*, 350 U.S. 383, 396; *United States* v. *Morton Salt Co.*, 338 U.S. 632, 643; *Pickus* v. *United States Board of Parole*, 507 F.2d 1107, 1113 (D.C.Cir. 1974); *Chock Full O'Nuts Corporation* v. *United States*, 453 F.2d 300, 303 (2d Cir. 1971). Neither petitioner nor the Government claims explicitly that it does apply retroactively. There is doubt as to the meaning of the new regulation.

Each of these questions, and perhaps others, should be resolved in a case in which they have been fully presented, are in issue, and have been the subject of administrative hearings and rulings. They are not in issue in this case and should not be decided here. *Cf. Michigan* v. *Payne*, 412 U.S. 47, 49 n.3.

dential effect of the decision below. The NRC could prospectively amend the regulations, so long as it does so in a procedurally valid manner and within its statutory limitations. In these circumstances, whether or not the regulations already have been amended, there is no issue of continuing significance calling for review by this Court.[16]

The court below noted (Pet. App. 41) that petitioner is not prevented from applying for another license, nor is the NRC barred from considering a new application. In response, the sole argument offered by the petition (p. 21 n.9) and the Government (pp. 10-11 and n.14) is that a new application would result in delay and expense. The petition does not support its assertion of additional expense, and the Government's effort is wholly without merit.[17] The argument that review by this Court is appro-

[16] Based upon the presumption of the propriety and effectiveness of the NRC June 20, 1975 action, the petition argues (pp. 22-23) that the newly "amended" regulation is entitled to controlling weight in interpreting the regulation which was before the court below. It does not, however, explain the inconsistency in asking this Court to review the Court of Appeals interpretation of a regulation and at the same time asserting that the regulation in issue has been amended so that it is no longer applicable.

[17] The Government's estimate of a cost of "at least $60 million in excess fuel costs" (p. 11 and n.14), in addition to being wholly outside the record, is based upon undocumented assumptions and inadequate factors. The argument is akin to the reasoning of a person who decides to buy an automobile which burns diesel fuel rather than one that burns regular gasoline because on the day of the purchase diesel fuel is cheaper than regular gasoline. The reasoning obviously fails to

priate in order to avoid delay presumes, moreover, that the result of NRC consideration of a new application would be the issuance of a new license for a nuclear plant at the Bailly site.[18] Any presumption on that subject is inappropriate. Not only would an administrative proceeding on a new application have to consider compliance with the regulations in issue here as to the minimum population center distance, but, as the Government notes (p. 10 n.13), it would have to deal with the "current requirements regarding content and format of such applications—requirements which have markedly changed. . . ."[19] And, it is quite possible that facts, as well as regulatory requirements, have changed.

[17] (Continued)
consider the relative purchase price of the two automobiles, the life expectancy or maintenance costs of each, the safety or reliability of each, projections as to future availability or cost of the two kinds of fuel and a host of other factors.

[18] It is inappropriate for the NRC—the regulator—to make any such presumption. The NRC succeeded only to the regulatory and not the promotional functions of the AEC, and therefore the petition is wrong when it argues (pp. 13-14) that the NRC is charged with carrying out a program to encourage widespread participation in the development and utilization of atomic energy. Energy Reorganization Act of 1974, Pub.L. No. 93-438, 88 Stat. 1223-1254; see also Pet. App. 17-18.

[19] The Government's observation (p. 11 n.13) that the additional effort would not produce a corresponding increase in safety because of the two-step licensing process, seems to eliminate safety implications from compliance with current regulations and from the "extensive review" by the Commission staff and the Advisory Committee on Reactor Safeguards.

CONCLUSION

The decision of the court below prevents the construction of one nuclear power plant under one AEC decision. It does not constitute judicial interference with a Congressionally conceived regulatory system, as the petition argues. (p. 21). It represents, instead, the effective and proper functioning of our traditional system of judicial review of administrative agency decisions. There is no continuing significance to the decision below, and there is no issue calling for review by this Court.

The petition for certiorari should be denied.[20]

Respectfully submitted,

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[20] The suggestion in the petition (p. 24), concurred in by the Government (p. 11), that the Court summarily reverse the decision below is untenable. Such relief would require rejection of the alternative grounds presented to but not decided by the lower court. *Cf. Langnes* v. *Green*, 282 U.S. 531, 538-39; *United States* v. *American Ry. Exp. Co.*, 265 U.S. 425, 435. Those grounds are briefly summarized as follows:

a) That by reason of the specially protected status of the National Lakeshore (16 U.S.C. §§460u-460u-9), the clearly established adverse intrusions which construction

[20] (Continued)

and operation of the Bailly plant would have on it (*e.g.*, Pet. App. 26-27), and the irrevocable opposition of the Department of the Interior (*id.* at 25), which has exclusive jurisdiction over the Lakeshore, even as to other federal agencies (*Universal Interpretative Shuttle Corp.* v. *Washington Metropolitan Area Transit Commission*, 393 U.S. 186), the AEC could not legally permit petitioner to use or adversely affect the Lakeshore in any way (*United States* v. *Alford*, 274 U.S. 264).

b) That for a number of reasons, the decision of the AEC was in violation of the provisions of the National Environmental Policy Act (42 U.S.C. §§4321, *et seq.*), both procedurally (*Calvert Cliffs Coordinating Committee* v. *AEC*, 449 F.2d 1109 (D.C.Cir. 1971), and substantively (*Sierra Club* v. *Froehlke*, 486 F.2d 946, 953 (7th Cir. 1973). Among the specific NEPA violations are: (i) the AEC improperly limited its consideration of alternative sites to only one and, as to that one, its conclusion that Bailly was preferable was unsupported by reliable, probative and substantial evidence, and was based upon the impermissible ground of delay; (ii) the AEC's analysis of the benefit of the proposed action—the need for power —was unsupported by the record; (iii) the AEC's final cost-benefit analysis was arbitrary and capricious.

c) That because of the refusal of the AEC to permit further proceedings based upon newly available evidence with respect to the need for power and petitioner's plans to participate in the generating capacity of another nuclear plant (*Northeast Airlines, Inc.* v. *Civil Aeronautics Board*, 345 F.2d 484 (1st Cir. 1965)), *cert. den.*, 382 U.S. 845), and with respect to a document dealing with AEC policy on siting considerations (*Committee for Nuclear Responsibility, Inc.* v. *Seaborg*, 463 F.2d 783, 787 (D.C. Cir. 1971)), the agency decision could not stand.

APPENDIX

Allied-Gulf Nuclear Services, et al. (Barnwell Nuclear Fuel Plant), 4 A.E.C. 483, 485 (1970) (". . . the nearest population center having a population in excess of 26,000 is Augusta, Georgia, which is 31 miles away.").

Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), 4 A.E.C. 235, 237 (1969) ("Washington, D.C., 45 miles northwest of the site, is the nearest population center (population greater than 25,000) . . .").

Boston Edison Co. (Pilgrim Nuclear Power Station), 4 A.E.C. 144, 146 (1968) ("The nearest population center, Brockton, Massachusetts, with 83,499 residents in 1965, is 23 miles from the site.").

Commonwealth Edison Co. (Braidwood Station, Units 1 and 2), RAI-75-1, 1197, 1225 (1975) ("83. The nearest population center containing more than 25,000 people is Joliet, Illinois which is about 20 miles north-northeast of the site. . . .").

Commonwealth Edison Co. (Byron Station, Units 1 and 2), RAI-74-12, 1006, 1035 (1974) ("92. The nearest population center containing more than 25,000 people is Rockford, Illinois, which is about 17 miles northeast of the site. . . .").

Connecticut Light and Power Co. et al. (Millstone Nuclear Power Station, Unit No. 2), 4 A.E.C. 466, 468 (1970) ("The radius of the low population zone is 2.3 miles, and the population center distance is 3.2 miles, which is the distance to the nearest boundary of the City of New London.").

Consumers Public Power District (Cooper Nuclear Station), 4 A.E.C. 105, 106 (1968) ("The nearest popu-

lation centers with more than 25,000 residents (Lincoln, Nebraska and St. Joseph, Missouri) are at least 60 miles from the site.").

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2, RAI-74-5-861, 865 (1974) ("The nearest boundary of Rock Hill, South Carolina, which is the closest population center (as defined in 10 CFR Part 100) with a populaton of 25,000 or more, is about 5.1 miles from the proposed plant, or slightly more than 1⅓ times the distance to the outer boundary of the low population zone (PSAR 2.1).").

Duke Power Co. (Oconee Nuclear Station, Units 1, 2 and 3), 4 A.E.C. 24, 28 (1967) (". . . the nearest population center being Andersen, South Carolina, with a population of 41,000, located 21 miles southeast of the site.").

Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), RAI-73-2, 92, 96 (1973) ("The Plant is located at the southern end of Lake Norman and approximately 11 miles from the city boundary of Charlotte, the closest population center.").

Duquesne Light Co., et al. (Beaver Valley Power Station, 4 A.E.C. 360, 362 (1970) (("The low population zone has a radius of 3.6 miles and the nearest population center is East Liverpool, Ohio, about 5 miles away, with a 1969 population of 22,300.").

Duquesne Light Co. (Beaver Valley Power Station, Unit No. 2) RAI-74-4, 711, 716 (1974) ("The 499 acre site of the proposed facility is . . . five miles from East Liverpool, Ohio (population 20,020) . . .").

Duquesne Light Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), RAI-74-9, 538, 572 (1974) ("The two nearest population centers are Mentor, Ohio (population 25,000) located about 10 miles southwest of the site, and Painesville, Ohio (population 16,500) located 6 miles southwest of the site.").

Florida Power and Light Co. 4 A.E.C. 373, 375 (1970) ("The nearest population center having a population in excess of 25,000 is Fort Pierce, located about 8 miles north of the plant.").

Florida Power Corp. (Crystal River Unit 3 Nuclear Generating Plant), 4 A.E.C. 166 (1968) ("The nearest population center with more than 25,000 residents is Gainesville, Florida which is 55 miles from the site.").

General Electric Co. et al. (Southwest Experimental Fast Oxide Reactor), 3 A.E.C. 40, 46 (1965) ("The largest population centers of significant size in the vicinity are Fayetteville, with a population of approximately 25,000. . . .").

Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1, 2, 3 and 4) RAI 74-5, 895, 912 (1974) ("The 3177 acre site . . . is . . . approximately 26 miles south-southeast of Augusta, Georgia, the nearest population center containing more than 25,000 people. . . . This population center distance, 26 miles, is more than one and one-third times the low population zone radius of 2 miles . . . as required by 10 CFR Part 100.").

Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1, 2, 3, & 4), RAI-74-6, 1166, 1173 (1974) (". . . the 3177 acre site for the proposed plant is . . . approximately 26 miles south-southeast of Augusta, Georgia, the nearest population center containing more than 25,000 people.").

Indiana & Michigan Electric Co. (Donald C. Cook Nuclear Plants Units 1 and 2), 4 A.E.C. 266, 267 (1969) (". . . the Benton Harbor-St. Joseph area (about 8 miles away) is the nearest population center having a population of about 32,000.").

Jersey Central Power and Light Company (Forked River Nuclear Generating Station, Unit 1), RAI-73-7, 550, 552 (1973) ("The nearest city with a resident popu-

lation greater than 25,000 is Fort Dix, 23 miles northwest.").

Jersey Central Power & Light Co., et al. (Three Mile Island Nuclear Station, Unit 2), 4 A.E.C. 283, 285 (1969) ("Based upon the combined population of the Middletown-Steelton communities (22,450) with their nearest boundary of 2.2 miles, the Applicants have proposed a low population zone radius of two miles.")*

Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station) 4 A.E.C. 185, 188 (1968) ("The nearest population center having a population in excess of 25,000 is the City of Lewiston, located 26 miles northwest of the site.").

Metropolitan Edison Co. (Three Mile Island Nuclear Power Station Unit 1), 4 A.E.C. 101, 102 (1968) ("The nearest population center, with more than 25,000 inhabitants, begins about 7 miles away and consists of the towns of Steelton and Harrisburg.").

Niagara Mohawk Power Corp., 3 A.E.C. 5, 15 (1965) ("The Oswego County population in 1960 was 86,118 persons, one-quarter of whom reside in the City of Oswego which is about seven miles from the site. . . . The population center distance and the low population zone distance are both considered to be six miles.").**

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), 4 A.E.C. 121, 123 (1968) ("The nearest population center with a population of greater than 25,000 is the Minneapolis-St. Paul area.").

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* This decision is unclear in that it makes no reference at all to population center distance.

** This decision is unclear as to how the population center distance was determined and in that it uses the same figure for the population center distance and the low population zone, although 10 CFR §100.11(a)(3), provides that the former should be at least 1⅓ times the latter.

Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant), 4 A.E.C. 89, 91 (1968) ("The distance from the reactor to the nearest exclusion boundary on land will be ½ mile. The low population zone radius is 6 miles and the population center distance is 10 miles, which is the distance from the site to the nearest boundary of San Luis Obispo. (Emphasis supplied.)").

Pacific Gas and Electric Co. (Diablo Canyon Unit 2), 4 A.E.C. 447, 450 (1970) ("The radius of the low population zone is 6 miles and the population center distance is 10 miles, which is the distance from the site to the nearest boundary of the City of San Luis Obispo.").

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), RAI-74-6, 1098, 1101 (1974) ("The low population zone for the facilities is 1.27 miles and the distance to Pottstown, the nearest population center, is 1.7 miles.").

Philadelphia Electric Co. (Peach Bottom Atomic Power Station Units 2 and 3), 4 A.E.C. 64, 66 (1968) ("The closest population center is Lancaster, Pennsylvania, located about 18 miles north of the site and having a population of about 91,000. . . .").

Portland General Electric Co., et al. (Trojan Nuclear Plant), 4 A.E.C. 529, 531 (1971) ("The nearest population center is the Kelso-Longview community, 6 miles from the site, with a population of 39,000.").

Public Service Electric and Gas Co. (Salem Nuclear Generating Station Units 1 and 2), 4 A.E.C. 175, 177 (1968) ("The nearest population center of about 25,000 people is Bridgeton, New Jersey, 15½ miles east of the site.").

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station Unit No. 1), 4 A.E.C.

181, 182 (1968) ("The nearest population center with more than 25,000 inhabitants is Lodi, which is 17 miles south-southeast of the facility.").

Tennessee Valley Authority (Bellefonte Nuclear Plant Units 1 and 2), RAI-74-12, 1124, 1128-9 (1974) (". . . the Applicant has identified the combined cities of Scottsboro and Hollywood, Alabama, 4 miles west of the site, as the population center because it is expected to have a population of greater than 25,000 residents by 1990. . . .").

Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2), RAI-74-10, 673, 694 (1974) ("The nearest population center, as defined in 10 CFR Part 100, Fort Worth, Texas. . . .").

Toledo Edison Co., et al. (Davis-Besse Nuclear Power Station), 4 A.E.C. 571, 574 (1971) ("The nearest population centers (population greater than 25,000) are Toledo and Sandusky each of which is approximately 20 miles from the site. . . .").

Virginia Electric and Power Co. (North Anna Power Station Units 1 and 2), 4 A.E.C. 544, 546 (1971) ("The nearest population center projected to have more than 25,000 people by the year 2000 is Fredericksburg, Virginia, located 23.5 miles northeast of the station. . . .").

Virginia Electric and Power Company (North Anna Power Station, Units 3 and 4), RAI-74-7, 126, 135-6 (1974) ("Fredericksburg, Virginia (1970 population was 14,450), 23.5 miles northeast to the station, is the nearest population center projected to have more than 25,000 people by the year 2000.").

Virginia Electric and Power Co. (Surry Power Station, Units 3 and 4), RAI-74-9, 506, 529 (1974) ("69. The record shows that the nearest population center containing more than about 25,000 people is Newport

News, Virginia, which extends from 5 miles east to 20 miles south of the site. . . .").

Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), RAI 73-3, 197, 200 (1973) ("The proposed site meets the criteria given in 10 CFR Part 100 for population center distance (Richland, Washington, 1970 population 26,290, 12 miles distant) . . .").

Wisconsin Public Service Corp., et al. (Kewaunee Nuclear Power Plant), 4 A.E.C. 138, 139 (1968) ("The nearest population center with a population greater than 25,000 is Manitowoc, Wisconsin, which is 17.5 miles south of the Plant.").